

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4423 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LALITABEN D/O NARSIBHAI M. PATEL

Versus

RAIBEN W/O SHANKERBHAI

Appearance:

1. Special Civil Application No. 4423 of 1986
MR MI PATEL for Petitioner No. 1
RULE SERVED for Respondent No. 1
MR AJ PATEL for Respondent No. 2-9
MR HASIT DAVE, AGP for Respondent No. 10
-

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 07/10/2004

ORAL JUDGEMENT

This petition is filed under Article 227 of the

Constitution of India praying for quashing and setting aside the judgment and order dated 24.12.1985 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A. 929 of 1984 and consequently restoring the order dated 28.02.1984 passed by the Deputy Collector, Kaira in Tenancy Appeal No. 6278 of 1983.

2. The case of the petitioner is that the petitioner is the owner of the land bearing Revenue Survey No. 743, admeasuring acres 2-22 gunthas, situated in the sim of village Adas, Tal. Anand, Dist. Kaira. The petitioner is a blind woman since her childhood and, therefore, the immovable properties including the land bearing Survey No. 743 were taken under the management of the Collector, Kaira under the Provisions of the Guardianship and Court of Wards Act, on 18.10.1947 and the guardianship stood terminated with effect from 24.04.1977. During the tenure of guardianship, the Collector, Kaira as the Court of Wards, was in possession of the aforesaid land, and he got the said land cultivated through various persons by granting yearly leases in their favour.

3. It is also the case of the petitioner that before the termination of the guardianship and Court of Wards, the possession of the land bearing Survey No. 743 was taken from its cultivator, namely, Shri Ashokbhai Shankerbhai and it was handed over to the petitioner on March 24, 1977 before the termination of the Guardianship on April 24, 1977.

4. It is also the case of the petitioner that in the meanwhile, however, respondents No. 1 to 9 filed Tenancy Case No. 768 of 1976 before the Mamlatdar and Agricultural Lands Tribunal, Anand for a declaration that they have become deemed purchasers of the suit land under the Provisions of Section 32 G of the Bombay Tenancy and Agricultural Lands Act, 1948. The said application was, however, dismissed as they were not held to be tenants of the suit land. Against the said order dismissing the application, the respondents No. 1 to 9 filed Tenancy Appeal No. 480 of 1978 before the Deputy Collector, Kaira. The said appeal was dismissed by the Deputy Collector, Kaira. The said order of dismissal of appeal was further challenged by respondent Nos. 1 to 9 before the Gujarat Revenue Tribunal which set aside the order passed by the Deputy Collector, Kaira and remanded the matter to the Deputy Collector for a fresh decision. After remand, the Deputy Collector set aside the original order passed by the Mamlatdar & Agricultural Lands Tribunal in Tenancy Case No. 768 of 1976 and remanded

the matter for a fresh decision by the Mamlatdar & A.L.T., Anand. The Mamlatdar & A.L.T., Anand renumbered the said proceedings as Tenancy Case No. 107 of 1982. The petitioner denied the claim of respondents No. 1 to 9 and inter alia contended before the Mamlatdar that the said respondents have no right as tenants in respect of the suit land, that the possession of the suit land had been handed over to the petitioner prior to the termination of guardianship and Court of wards, that possession of the suit land has been lawfully handed over to the petitioner and that deceased Shankerbhai Haribhai was never a tenant of the suit land even prior to 1947. It was contended that in any event, if the said Shri Shankerbhai had any right as a tenant before 1947, the same was extinguished in view of the fact that the land in dispute was taken under the management of the Collector under the Court of Wards Act. It was also contended by the petitioner that Shankerbhai Haribhai was not a tenant of the suit land; but if at all, there was any tenant, prior to 1947, it was one Haribhai Jivabhai who was a Baria and his surname was Padhiar and he had died in the year 1969. His son's name was Ranchhodbhai Haribhai and his widow was Nathiben. The petitioner further contended that respondents No. 1 to 9 had nothing to do with said Haribhai Jivabhai Padhiar and they are heirs of one Shankerbhai alias Ranchhodbhai Haribhai Bhoi and not Ranchhodbhai Haribhai Padhiar. The petitioner also led voluminous evidence in support of her case and despite this fact, Mamlatdar & A.L.T., Anand by his judgment and order dated 24.06.1983 granted a declaration in favour of respondents No. 1 to 9 and held that they were the tenants of the suit land during the tenure of guardianship of the Collector under the Court of Wards Act and that even prior to 1947, the predecessor of respondents No. 1 to 9 was in possession of the suit land as a tenant.

5. Being aggrieved by the said judgment and order of the Mamlatdar & A.L.T., the petitioner preferred Tenancy Appeal No. 6278 of 1983 before the Deputy Collector, Kaira who vide his judgment and order dated 28.02.1984 had allowed the said appeal by holding that the petitioner had been handed over possession of the suit land on 24.03.1977 before the termination of the guardianship of the Collector, Kaira and, therefore, the right, if at all, of a tenant over the suit land, did not survive. The Deputy Collector further held that the protected tenant, if at all, there be any, was one Padhiar Ranchhodbhai Haribhai and he was not the same person as Shankerbhai Haribhai Bhoi as claimed by respondents No. 1 to 9. He had further held that the

respondents No. 1 to 9 had no interest in the suit land as protected tenants. The Deputy Collector, therefore, allowed the said appeal and set aside the judgment and order of the Mamlatdar & A.L.T., Anand.

6. Being aggrieved and dissatisfied with the said judgment and order of the Deputy Collector, the respondents No. 1 to 9 have preferred Revision Application No. TEN.B.A. 929 of 1984 before the Gujarat Revenue Tribunal and the Tribunal while exercising its revisional jurisdiction interfered with the findings recorded by the learned Deputy Collector and set aside the same and substituted new findings by holding that respondents No. 1 to 9 are the heirs of the original protected tenant and on termination of the Court of Wards, their rights have been revived and that they were entitled to purchase the said land. The Tribunal has further held that Ranchhodbhai Haribhai was the same person as Shankerbhai Haribhai and that Shankerbhai's alias is Ranchhodbhai and that he was Bhoi and not Padhiar.

7. It is this order of the Tribunal dated 24.12.1985 which is under challenge in the present petition filed under Article 227 of the Constitution of India.

8. Mr. Jayesh Patel for Mr. M.I. Patel, learned advocate appearing for the petitioner has submitted that the Tribunal had no jurisdiction to interfere with the findings recorded by the Deputy Collector and that the said findings were binding on the Tribunal. The order passed by the Deputy Collector is not contrary to law. He has further submitted that there was no substantial error or defect in following the procedure provided by the Tenancy Act nor there was any failure to take evidence nor there was any error in appreciating important evidence which has resulted into miscarriage of justice. He has further submitted that the Tribunal has failed to appreciate that so-called tenancy rights of a protected tenant which arose under the Tenancy Act of 1939 were not the rights of a protected tenant which arose under the Tenancy Act of 1948, because before the Act of 1948 came into force, the suit land was taken in management and possession of the Collector as laid down under the Court of Wards Act. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of S.N. KAMBLE V/S. THE SHOLAPUR BOROUGH MUNICIPALITY AND ANOTHER, AIR 1966 SUPREME COURT 538 wherein it is held that "in view of the provisions of Section 88 of the Tenancy Act, the provisions of Sections 1 to 87 do not apply and,

therefore, the tenant had not become protected tenant under the provisions of the Tenancy Act of 1948 and, therefore, the question of reviving the tenancy under the Court of Wards Act did not arise."

9. Mr. Patel has further submitted that the Tribunal has proceeded on altogether erroneous premises while holding that during the period, the management and possession of the suit land was with the Collector under the provisions of the Court of Wards Act, the tenancy rights of the respondents No. 1 to 9 were suspended and they were revived after the termination of the management. This finding given by the Tribunal is based on fallacious interpretation that the tenancy rights if there be any under the 1939 Act continued even after coming into operation of the 1948 Act. The rights of the protected tenants were taken away.

10. Mr. Patel has further relied on the decision of the Hon'ble Supreme Court in the case of MARUTI BALA RAUT V/S. DASHRATH BABU WATHARE AND OTHERS, AIR 1974 SUPREME COURT 2051 wherein on a reference under Section 70 (b) of the Act, the Mamlatdar came to the conclusion that one M was tenant in possession on the particular date but his order was reversed in appeal by the Special Deputy Collector. There was elaborate discussion of the evidence in the decision of the Special Deputy Collector. The Revenue Tribunal in revision, however, went into the evidence and after discussing the evidence set aside the order of the appellate Court. On these facts, the Hon'ble Supreme Court has held that the Tribunal has acted in complete disregard of its power and proceeded as though it were either dealing with the matter as a court of first instance or as an appellate court. While the Special Deputy Secretary dealt with the Mamlatdar's order as an appellate authority and was, therefore, entitled to appreciate the evidence and has come to his own conclusion, the Tribunal while exercising its powers under Section 76 had no such power. The Hon'ble Supreme Court has further held that the order of the Court could not be sustained. The High Court while exercising its powers under Article 227 was not entitled to discuss the evidence and come to its own conclusion as to who was in possession of the land. That was a matter for the revenue authorities. The High Court had plainly overstepped the limits of its powers under Article 227.

11. Mr. Patel has lastly relied on the decision of the Hon'ble Supreme Court in the case of SMT. PARVATI AND OTHERS V/S. FATEHSINHRAO PRATAPSINHRAO GAEKWAD, 1987 (2) 28 G.L.R. 791 wherein it is held that "On a plain

reading of Section 88 of the Act, it is quite clear and apparent that the provisions of the Act are not applicable to any area notified by the State Government as being reserved for non-agricultural or industrial development. The argument that in view of the provisions of Section 89(2)(b), the right, title, interest, obligation, liability already acquired, accrued or incurred before the issuance of the notification are not affected is not sound. Section 89(2)(b) inter alia reads "Shall, save as expressly provided in this Act, not affected or deemed to be affected" Section 88 (1)(b) is a specific provision, and says that on the issue of a notification in the Official Gazette specifying areas reserved for non-agricultural or industrial development, the provisions of the Act shall not apply."

12. Based on the aforesaid statutory provisions and the decided case law on the subject, Mr. Patel has submitted that the Tribunal has corrected an obvious error of facts and in law while reversing the order passed by the Deputy Collector and, therefore, the said judgment and order of the Tribunal is required to be quashed and set aside and the present writ petition deserves to be allowed.

13. Mr. A.J. Patel, learned advocate appearing for respondents No. 1 to 9, on the other hand, has supported the order passed by the Tribunal and strongly submitted that while exercising the power under Article 227 of the Constitution of India, this Court should not interfere with the order passed by the Tribunal. He has further submitted that the Tribunal has neither reappreciated the evidence which were already led before the authorities below nor has given any fresh finding which did not germene from the record. The Tribunal has rightly decided the entire issue and after recording and appreciating the evidence on record, has come to the correct conclusion that the rights of respondents No. 1 to 9 were falling into the category of other rights as their predecessor was continued as tenant in 1946 - 47, meaning thereby, on 08.11.1947, they were continued as tenants and accordingly, by Entry No. 5268, their predecessor, namely, Haribhai Jivabhai's name was entered into as a protected tenant. He has further submitted that the Mamlatdar has also observed in the order that after the management was taken over by the Collector, the tenants were not removed from the suit land and that no evidence has been led by the landlord. The Mamlatdar has given a categorical finding that the possession of the suit land was with late Shri Haribhai Jivabhai even prior to the management was taken over by the Collector and he

had been cultivating the land as a tenant and during the management of the Collector also, he was continued as a protected tenant. The Mamlatdar has further recorded that as per the provisions contained in Section 88 (d) of the Tenancy Act, the landlord has not filed any suit for possession of the suit land as Gharkhed land and after the expiry of the period of limitation, as per the provisions contained in Section 32 (G), the tenants were considered to be the deemed purchasers of the said land. The Mamlatdar has, therefore, held that respondents No. 1 to 09 have acquired the tenancy rights in accordance with law.

14. Mr. Patel has further submitted that the Tribunal has at length discussed the various documentary evidence and has come to the conclusion that the Deputy Collector has decided the appeal only on one point by taking the view that Ranchhodbhai and Shankerbhai both were different persons and that Ranchhodbhai was not the predecessor of the respondents No. 1 to 9 as a tenants on this land since 1930 and they have come for the first time during the tenure of the management of the Collector. The Tribunal has further observed that the Deputy Collector has come to this conclusion after verifying the records. On record, it was not found that Ranchhodbhai and Shankerbhai were the same person. However, the entry of 1946 - 47 was clear wherein the name of Haribhai Jivabhai was shown as the protected tenant. Even in the records maintained during the period of the management by the Collector, the name of Haribhai Jivabhai was continued as protected tenant. In this connection, the Tribunal has referred to the letters written in 1946 which were produced from the proper custody and they were old by more than 30 years. The same were admissible as per the provisions contained in the Evidence Act. The Tribunal has, therefore, given categorical finding that Shri Haribhai Jivabhai was the protected tenant prior to the management of the suit land was taken over by the Collector and his name was entered as a protected tenant as per the provisions of the Tenancy Act, 1939. During the period when the Collector was in charge of the management of the suit land, the rights of the protected tenant of Shri Haribhai Jivabhai were suspended and when the land was free from the management of the Collector, the said rights were revived. The Tribunal has also taken note of the fact that at the time when the possession was given to the petitioner, signature of respondent No. 2 was taken which shows that the possession was with the respondents. The Tribunal has also observed that the land was given to the respondents by way of protected tenancy duly

established under the law and the said right was not challenged by the landlord nor any actions were taken to that effect. The Tribunal has, therefore, come to the conclusion that no sooner the land was free from the Collector's management, the rights of the respondents as protected tenants were revived and they became deemed owner of the suit land.

15. Mr. Patel has lastly submitted that considering the entire facts and circumstances of the case, the Tribunal has come to right conclusion and reversed the order of the Deputy Collector and restored the order of the Mamlatdar. Since two authorities below have given concurrent finding and the order of the Deputy Collector is not based on proper appreciation of evidence, Mr. Patel has submitted that the order passed by the Tribunal does not call for any interference while exercising jurisdiction under Article 227 of the Constitution of India.

16. Mr. Hasit Dave, learned A.G.P. appearing for respondent No. 10 has fairly submitted that respondent No. 10 is a formal party and has further submitted that the order passed by the Gujarat Revenue Tribunal does not call for any interference.

17. After having heard learned advocates appearing for the respective parties and after having gone through all the three orders passed by the authorities below as well as the judgment cited before the Court, the Court is of the view that Mamlatdar and Gujarat Revenue Tribunal have come to the correct conclusion and that the authorities cited by the learned advocate appearing for the petitioner are not applicable to the facts of the present case. Both the orders were before the Tribunal and after having gone through the said orders, the Tribunal has found that Mamlatdar has come to the correct conclusion after appreciation of the facts and the indulgence shown by the Deputy Collector was not supported by any evidence and on that premises, if the Tribunal has reversed the order of the Deputy Collector and restored the order of the Mamlatdar, it cannot be said that the Tribunal has committed any error or that the Tribunal has reappreciated the evidence or has come to altogether a different finding. The Mamlatdar as well as the Tribunal both have found that the predecessor of the respondents No. 1 to 9 i.e. Haribhai Jivabhai was a protected tenant even prior to the management taken over by the Collector and during the tenure of such management of the Collector, the possession of the suit land was with the said Shri Haribhai Jivabhai. Since the

predecessor of the respondents No. 1 to 9 was in possession of the suit land all throughout, it cannot be said that he was not the protected tenant and the present respondents being the legal heirs and representatives of said Shri Hirabhai Jivabhai, they have every right to be considered as a deemed owner under the provisions of Section 32 (G) of the Tenancy Act. The right of protected tenant given to the predecessor of the respondents No. 1 to 9 under the Act of 1939 was continued. As on 08.11.1947, he was accepted to be the tenant of the suit land. Based on this fact, the revenue entry was also made recording the name of said Shri Haribhai Jivabhai as the protected tenant. What was weighed with the Mamlatdar as well as with the Tribunal was that the landlord has not taken any step whatsoever to take back the possession of the suit land as Gharkhed land and hence, the possession of the landlord was not proved at any point of time.

18. Considering the above facts and circumstances of the case and considering the limited scope and ambit of the powers to be exercised by this Court under Article 227 of the Constitution of India and considering the further fact that the decisions relied upon by the learned advocate appearing for the petitioner are distinguishable and are not applicable to the facts of this case, this Court is of the view that the Tribunal has rightly decided the revision application in favour of respondents No. 1 to 9 and the said decision is based on sound reasoning which does not call for any interference by this Court.

19. This petition is accordingly dismissed. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#
